



EL 1/28/05  
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January 28, 2005

**By U.S. Mail – Return Receipt Requested**

Tom Turner  
Associate Regional Counsel  
U.S. EPA, Region V  
Office of Regional Counsel (C-14J)  
77 W. Jackson Boulevard  
Chicago, IL 60604



RE: RRG/Clayton Chemical Site (the "Site")

Dear Mr. Turner,

On behalf of Afton Chemical Corporation, I write to respond to Thomas Geishecker's letter dated November 22, 2004, regarding the RRG/Clayton Chemical Site General Notice of Potential Liability (the "General Notice Letter") and the follow up letter from Beverly Kush dated December 23, 2004 reflecting an extension of time until January 28, 2005 to respond to the November 22, 2004 letter. The United States Environmental Protection Agency (U.S. EPA) has requested that 68 of the over 2,800 potentially responsible parties identified to date indicate by January 28, 2005 a willingness "to voluntarily perform or finance the response activities that U.S. EPA has determined or will determine are required at the Site" and to reimburse U.S. EPA for costs incurred to date.

Afton Chemical participated in the meeting of recipients of the Notice Letters in St. Louis on January 25, 2005, in attempting to form a group that can respond to the Clayton Chemical site. However, forming the group has been delayed and we have several concerns that we hope the United States Environmental Protection Agency ("EPA") will help address.

The Clayton Chemical Site ("CCC Site") is surrounded by the Sauget Area 1 and 2 Superfund Sites. Afton Chemical Corporation is the new name of Ethyl Petroleum Additives, Inc., a signatory to the Administrative Order by Consent related to the Sauget Area 2 Sites, Docket No. V-W-'01-C-622. The Sauget Area 2 Sites include Site S, which was used by Clayton Chemical to dispose of still bottoms from its solvent recycling. That Site contains many of the same chemical constituents that were found at Clayton Chemical in past sampling events. Insofar as we are aware, it presents the same risks and concerns that are present at the CCC Site. Yet the Agency has made a determination that the CCC Site should have a time critical soil removal, while it has determined that Site S should be investigated in an RI/FS (including risk determinations and remedial option evaluations). There is no reason that we have seen to date to handle the CCC Site differently from the closely related

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Site S. We would like to understand why such different approaches are being taken to similar constituents in the same area.

Also, we think it is important for you to know that the Sauget Area 2 Sites Group, which is undertaking the investigation work in Area 2, has asked the remedial program at EPA to send notice letters to the Clayton Chemical PRPs that will indicate their potential liability for the Sauget Area groundwater contamination. That request went to Tom Martin and Nabil Fayoumi. The Sauget Area 2 Sites Group has been asked by EPA to undertake a fate and transport model of the Sauget Area 2 groundwater. Groundwater fate and transport models for the area would need to include impacts from the CCC Site on the groundwater. Thus, the CCC PRPs need to be included in that investigation work.

The recent Supreme Court decision in *Cooper Indus., Inc. v. Aviall Serv., Inc.*, 2004 WL 2847713, No. 02-1192 (December 13, 2004), and the position taken in Amicus Briefs by the Department of Justice in that case, has a critically important impact on the requested work. We can not do work such as that requested by you at the CCC Site, under any conditions that do not allow contribution actions against any absent PRPs. The *Aviall* decision bars commencement of contribution actions under CERCLA Section 113(f)(1) absent an enforcement suit by the United States and left open the question, already resolved adversely in the Seventh Circuit, whether a responsible party may bring a cost recovery claim under Section 107(a) of CERCLA. Our only option is to undertake CERCLA cleanup work under conditions required by *Aviall*, not currently in effect.

Further, we have insufficient information to date on the activity planned by EPA at the CCC Site. Before we can consider undertaking any work at the Site we need to know:

- The scope and content of the contemplated project,
- The data upon which EPA is relying in its determination that the activity referenced in your letters should be undertaken as a time critical removal action,
- Identification of the receptor(s) that this action is intended to protect,
- A clear delineation of the areas of impacted soil,
- A list of the constituents of concern and cleanup criteria, and
- The basis of U.S. EPA's cost estimates for the removal action as between \$1.0 to \$2.5 million dollars.

Additionally, there are certain PRP issues and access issues that must be addressed to facilitate the successful formation of a group and implementation of the response action. First, you must identify and notify the owners and operators of the Site. The site and the equipment on site are privately owned. The current owner of the site did not operate RRG or Clayton Chemicals. We are not certain who owns the equipment and whether financial institutions have security interests that must be addressed. U.S. EPA has asked not only that soils be removed, including under unspecified process equipment, but also solids from tanks. This situation presents very complex access issues. We request that all owners of land and equipment receive a General Notice Letter. In addition, U.S. EPA has information related to generators, owners and operators who were involved with the site prior to 1979 and are likely significant contributors to any soil contamination. These PRPs should receive notice letters.

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Nothing contained in this letter, the contents of this letter nor anything said in settlement negotiations is to be considered an admission of fact or law, including but not limited to, an admission of liability for the alleged environmental conditions at the RRG/Clayton Chemical Site.

As requested in the U.S. EPA Letter, contact information for Afton Chemical Corporation is listed in Attachment A. If you have any questions or concerns please feel free to contact me.

Yours truly,

A handwritten signature in black ink that reads "Ann T. Burks". The signature is written in a cursive, flowing style.

Ann T. Burks

ATB/lsp  
Attachment

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Associate Regional Counsel  
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EXHIBIT A

Afton Chemical Corporation

Ann T. Burks, Esq.  
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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

FEB 01 2005

OFFICE OF REGIONAL  
COUNSEL



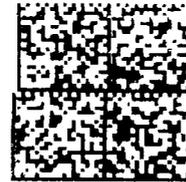
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Mailed From 23219

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